

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF NEW HANOVER

IN THE MATTER OF)
NORTH CAROLINA)
PERMIT NUMBER WQCS00012)
HELD BY THE CITY OF WILMINGTON)

SPECIAL ORDER
EMC SO

Pursuant to provisions of North Carolina General Statutes (G.S.) 143-215.2 and Order by Consent is entered into by the City of Wilmington, hereinafter referred to as the City, and the North Carolina Environmental Management Commission, an agency of the State by G.S. 143B-282, and hereinafter referred to as the Commission:

1. The City and the Commission hereby stipulate the following:

(a) The City holds North Carolina Permit Number WQCS00012 for its wastewater collection system, but is unable to consistently comply with sanitary sewer overflows (SSOs) as set forth in Permit Number WQCS00012. Frequent and repetitive SSOs have occurred in the portion of the City's wastewater collection system known as the Northeast Interceptor (NEI). Compliance with condition 1.2 of the permit requires the City to develop plans and specifications, securing necessary permits, and completing construction of the NEI, including, but not limited to: Lining of approximately 2,000 lf of the NEI on Greenville Loop Road, relocation of approximately 7,000 lf of force main on Hewlett's Creek downstream of PS#34, rehabilitation and/or replacement of sections of the NEI upstream of PS#34, installation of interim pump station capacity at PS#34 and PS#35, and replacement of air release valve at PS#35. The City and the Commission agree that the responsibility for the completion of the repairs that are described in item 1. (a) above is the responsibility of New Hanover permit WQCS00061.

(b) Noncompliance with final conditions constitutes causing and contributing to the pollution of the waters of this State, and the City is within the jurisdiction of the Commission under G.S. Chapter 143, Article 21.

(c) By letter dated April 12, 2006, the City was notified that a moratorium on the discharge of additional wastewater through the issuance of permits for new sewers tributary to the Northeast Interceptor until specific repairs were completed. On December 8, 2006, the City was notified that the moratorium would remain in effect until the completion of the repairs that are described in item 1. (a) above.

(d) The City has secured or will secure financing for planning, design, construction, and operation of necessary repairs and upgrades to the wastewater collection system which, when completed and operated, will be sufficient to adequately collect wastewater presently being collected by the existing collection system, so the City will be able to comply with final permit conditions.

(e) Since this Special Order is by Consent, neither party will file a petition for judicial review concerning its terms.

2. The City, desiring to comply with the Permit identified in paragraph 1(a) above, hereby agrees to do the following:

(a) As settlement of all alleged violations of Collection System permit WQCS00012 prior to entering into this Special Order by Consent, The City of Wilmington has paid all assessed penalties to the Department of Environment and Natural Resources.

(b) In order to further control flow rates through the NEI while the moratorium is in place, and to further plan for improvements to the sewer collection and treatment system, the City will do the following until the SOC expires:

1. Divert up to 600,000 gallons per day of wastewater flow from the NEI to the Northside Wastewater Treatment Plant (NSWWTP) by diversion from the Porters Neck sewer service area. Divert more flow if it can be shown that additional flow capacity can be allocated to the NSWWTP.
2. Evaluate the ability of the NSWWTP, which is currently being expanded, to accept additional flow through utilization of some new units prior to completion of the expansion.
3. Immediately initiate a sewer insert program for all manholes in the NEI service area and in the basin served by the NSWWTP. Expand the program system-wide to install inserts where most effective.
4. Implement a temporary system-wide flow-monitoring program during the winter of 2007/2008. Flow monitoring data can be used to determine flow components (i.e. base flows, rainfall dependent infiltration/inflow, and ground water infiltration) and to prioritize rehab activities.
5. Building permits for residential construction in the NEI service area are limited to a maximum total allocation of 60,480 GPD beginning April 20, 2007.
6. Building permits for commercial construction in the NEI service area are limited to a maximum total allocation of 59,520 GPD beginning April 20, 2007.
7. No applications will be submitted by the City or County for sewer extension permits within the NSWWTP service area. . Exceptions can be made for publicly funded projects determined to be for the "public good". Building permits for development in the NSWWTP service area will be limited to 120,000 GPD unless it is determined that additional flow can be temporarily allocated to the plant. Exceptions can be made for publicly funded projects in the NEI and NSWWTP service areas determined to be for the "public good".
8. A water use conservation program will be expanded for City customers. The City will work with the County to initiate a water conservation program.
9. Continue with capacity planning, allocation and management processes for the entire collection and treatment systems, which shall include planning for future upgrades and expansion of the Southside Wastewater Treatment Plant

(c) Provide the Wilmington Regional Office of the North Carolina Division of Water Quality (DWQ), located at 127 Cardinal Drive Extension, Wilmington, NC 28405, with a monthly report that includes the starting and ending flow at the NSWWTP, the starting and ending diversion flow rate, the previous, current month, and cumulative flow rate generated from new connections, and records of building permits issued for that month and cumulatively, within 15 days following the reporting period. This report shall also include the progress status of activities listed in paragraph 2 (b) 1-9 and 2 (e) 2.

(d) Evaluate the capability of the NSWWTP, prior to completion of ongoing permitted expansion, to treat and discharge wastewater flow volumes in excess of the current permitted limit while not exceeding the BOD mass allowed by existing effluent limits. If this can be demonstrated and supported based on the rerate study conducted by McKim and Creed to be published in September 2007, in order to accommodate further flow diversion from the NEI and to allow controlled growth prior to completion of the plant upgrade, the City should request from the

Division a modification to the NSWWTP permit allowing an increase in discharge flow justified by the rerate study results

- (e) Undertake the following activities in accordance with the indicated time schedule:
- 1) Operation and Maintenance requirements:
 - i) Continue to respond to NEI SSOs as per conditions found in Permit No. WQCS00012.

(f) Within 60 days of completion of the following activities, but in no case later than June 30, 2008, submit an engineer's certification, and place into operation:

1. Rehabilitate approximately 2,000 linear feet of 20-inch Force Main along Greenville Loop Road by lining.
2. Rehabilitate and/or replace the gravity sewer sections of the NEI directly upstream of Pump Station Number 34.
3. Make proposed junction box improvements at Pump Stations Number 34.
4. Complete proposed replacement of Air Release Valves.
5. Relocate approximately 7,000 linear feet of the 24-inch force main that currently parallels Hewletts Creek.
6. Install interim pumps at Pump Stations Number 34 and Number 35 to increase pumping capacity to meet peak flow needs.

(g) No later than thirty (30) calendar days after any date identified for accomplishment of any activity listed in 2(e), 2 above, submit to the Director of DWQ written notice of compliance or noncompliance therewith. In the case of noncompliance, the notice shall include a statement of the reasons(s) for noncompliance, remedial actions(s) taken, and a statement identifying the extent to which subsequent dates or times for accomplishment of listed activities may be affected.

3. The City agrees that unless excluded under paragraph four (4), the City will pay the Director of DWQ, by check payable to the North Carolina Department of Environment and Natural Resources, stipulated penalties according to the following schedule:

Violation Description	Stipulated Penalty
Failure to meet any milestone date identified in paragraph 2 (f) above.	\$1000 per day for first 7 days; \$1500 every day thereafter
Failure to submit any report required by paragraph 2 (c), 2 (f) and 2 (g) above.	\$1000 per day for first event; penalty doubles with each subsequent event
Any reportable spill (SSO) from the Northeast Interceptor under permit WQCS00012.	\$5000 for first event; \$10,000 for each subsequent event.

4. The City and the Commission agree that stipulated penalties are not due if the City does show cause to the Division of Water Quality that noncompliance was caused by extraordinary circumstances:

- (a) An act of God;
- (b) An act of war;
- (c) An intentional act or omission of a third party, but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the City;

- (d) An extraordinary event beyond the City's control (a ten-year/24-hour storm or other precipitation events less than that are not considered an extraordinary event). Contractor delays or failure to obtain funding will not be considered as events beyond the City's control; or
- (e) Any combination of the above causes.
5. Failure within thirty (30) days of receipt of written demand to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) days has elapsed.
6. This Special Order by Consent and any terms and conditions contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms and conditions contained therein issued in connection with Permit No. WQCS00012. In the event of a Permit modification or renewal (Permit No. WQCS00012), requirements contained therein shall supersede those contained in this Special Order by Consent, except as modified and contained herein.
7. Noncompliance with the terms of this Special Order by Consent is subject to enforcement action in addition to the above-stipulated penalties, including injunctive relief pursuant to G.S. 143-215.6(C).
8. The City, upon signature of this Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.
9. This Special Order by Consent shall expire 90 days after completion of scheduled actions in 2. (f). The moratorium imposed by DWQ on permitting of sewers tributary to the NEI will be lifted upon determination by the Director of the Division of Water Quality that the City has completed the items listed in 2 (f).

FOR THE CITY OF WILMINGTON

Sterling Cheatham, City Manager
Print Name and Title of Signing Official



Signature of Signing Official

Date: 9-14-07

FOR THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION:

Chairman of the Commission

Date: _____

